

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

IN RE: JAMES LARRY HENRY
KIMBERLY RENEE HENRY
DEBTORS.

CASE NO. 17-01972-5-SWH
CHAPTER 13

**AMENDED MOTION TO MODIFY CHAPTER 13 PLAN
AND FOR ATTORNEY FEES**

NOW COMES THE DEBTORS, through counsel, and hereby files this amended motion, amending the second motion to modify filed on September 9, 2019 (DE#87). This motion is amended to reflect a payment plan sufficient to pay general unsecured creditors in full, and to request a provision expressly modifying the automatic stay to allow secured creditor Time Finance to proceed to repossess the vehicle securing its claim. In support debtors thereof allege the following:

1. Debtors filed Chapter 13 bankruptcy on April 21, 2017.
2. Their 2nd amended plan was confirmed on May 1, 2019 at: **20 payments of \$457.00, followed by 12 payments of \$750.00, followed by 28 payments of \$1,140.00.**
3. Debtors have paid \$11,400.00 into their plan and requires approximately \$38,660.00 to complete the plan.
4. Debtors suffered significant damage to their residence as a result of Hurricane Florence forcing debtors to rent separate housing and to remove all personal property from the residence, causing unanticipated housing and storage expense.
5. As a result of damage from Hurricane Florence, upon debtors' motion, the Court modified debtors plan by order dated August 8, 2019 (DE#86), to allow debtors to recover from Hurricane Florence, as follows: **2 payments of \$5700.00. followed by 58 payments of \$756.00 – said plan payments commencing from the date of confirmation and the 58 payments of \$756.00 to commence August 1, 2019.**
6. Debtors continue to struggle to recover from Hurricane Florence: some personal property remains in storage, causing additional storage expense; further, debtors remain on a contractor's waiting list for repairs to their home and continue to incur additional housing expense caused by their inability to return home.
7. Debtors expected repairs to their home to be complete; the delay in the

completion of home repairs constitutes a substantial and unexpected change in circumstances which have caused debtors to default on their chapter 13 plan payments as per their modified chapter 13 plan.

8. Debtors expect completion of repairs to their residence by January 1, 2020.
9. In order to allow additional time for debtors to repair their residence and recover from Hurricane Florence, debtors move the Court to modify their plan as follows: **3 payments of \$3,800.00, commencing from the date of confirmation, followed by 4 payments of \$100.00, commencing September 1, 2019, followed by 53 payments of \$575.00, commencing January 1, 2019.**
10. The proposed modification will have no impact on general unsecured creditors; debtors' plan pays 100% of all allowed general unsecured claims.
11. In addition, in the Order Modifying Chapter 13 Plan dated August 7, 2019 (DE#85), debtors' chapter 13 plan payments were modified to exclude payment to Time Finance, whose claim is secured by a 1981 Chrysler LeBaron Convertible, with the intent to surrender the vehicle, but the Order did not expressly modify the automatic stay to permit Time Finance to repossess and liquidate the vehicle in accordance with state law; debtors request an order modifying the automatic stay to permit Time Finance to repossess and liquidate its collateral in accordance with state law.
12. In addition, debtors' counsel requests additional attorney fees in the amount of \$450.00 for making this motion on debtors' behalf, to be paid through the plan.

WHEREFORE, Debtors pray that the Court modify their plan to: **3 payments of \$3,800.00, commencing from the date of confirmation, followed by 4 payments of \$100.00, commencing September 1, 2019, followed by 53 payments of \$575.00, commencing January 1, 2019.**

Debtors further pray the Court approve modification of the automatic stay to permit to permit Time Finance to repossess and liquidate the 1981 Chrysler LeBaron convertible automobile in accordance with state law.

Debtors further pray the Court to approve attorney fees to debtors' counsel as set out above.

Dated: September 23, 2019

/s/ Anthony L. Register

Anthony L. Register
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion and Notice thereof was served on the following named persons, on this date, by electronically filing, or by mailing a copy of said document to them at their respective address, by depositing the same in a postpaid, properly addressed wrapper in a post office or other official depository under the exclusive care and custody of the U. S. Postal Service, as indicated below:

electronically

Mr. Joseph A. Bledsoe III
Chapter 13 Trustee

William F. Hill
Attorney
bill.hill@wfh-law.com

by US 1st class mail
James Larry Henry
Kimberly Renee Henry
5925 Malpass Corner Road
Currie, NC 28435-9469

Time Investment Corporation
d/b/a Time Finance
atten: Managing Agent
PO Box 4112
Wilmington, NC 28406-1112

Dated: September 23, 2019

/s/Anthony L. Register
Anthony L. Register

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

In re: James Larry Henry
Kimberly Renee Henry
Debtors.

Case No. 17-01972-5-SWH
Chapter 13

Notice of Amended Motion to Modify Chapter 13 Plan

TO: **Joseph A. Bledsoe III, Chapter 13 Trustee and Other Parties in Interest**

NOTICE IS HEREBY GIVEN of the Amended Motion to Modify Chapter 13 Plan ("Motion") by debtor through Anthony L. Register, attorney for debtor in the above-captioned case; and

FURTHER NOTICE IS HEREBY GIVEN that this Motion may be allowed provided no response is made in writing to U.S. Bankruptcy Court, Clerk of Court, P.O. Box 791, Raleigh, NC 27602 within 21 days from the date of this Notice; and

FURTHER NOTICE IS HEREBY GIVEN that the Court may rule on this Motion without any further notice if no response is made and that a hearing will be held only if a response is made.

DATED: September 23, 2019

/s/ Anthony L. Register
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Alley Register & McEachern
701 North 4th Street
Wilmington, NC 2401
(910) 251-0103